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Dear Members of the Committee

## Senate Economics References Committee Inquiry into corporate tax avoidance and minimisation: EY Submission

EY is a global professional services firm operating in over 140 countries and provides a range of professional services, including accounting advice, audit services, consulting services, corporate finance and valuation services, tax services and legal services.

We appreciate the opportunity to make a submission to the inquiry by the Senate Economics References Committee (the Committee) on *“tax avoidance and aggressive minimisation by corporations registered in Australia and multinational corporations operating in Australia with specific reference to”* seven listed matters.<sup>1</sup>

Our submission is divided into two sections. First we provide some overriding comments and then we respond to a number of the specific matters listed in the terms of reference for this inquiry. Our submission is attached and an Executive Summary is set out below.

### Executive Summary

Our overriding comments can be summarised as follows:

1. It is important for the Committee to distinguish between businesses operating across borders and those which operate only in Australia. Of course for both categories the primary question is whether the business pays the appropriate amount of tax in Australia. What the appropriate amount of tax is then becomes a critical question. Clearly this is the amount of tax payable based on the laws that the governments have introduced in response to their policy decisions.
2. For businesses operating across borders a further and sometimes more difficult question arises, namely, is the business paying its appropriate share of Australian taxes given the substance of its operations in Australia. This requires an assessment of agreements reached between Australia and other relevant countries on what is an appropriate manner in which the profits of the enterprise are to be split between the jurisdictions for taxing purposes. That involves consideration of the policies of relevant governments and their negotiations, including international double tax agreement policies.
3. As decisions about tax reform continue to be made, the implications for both categories of business must be considered.

4. Australia already has strong tax laws. Australia's corporate tax system is in many respects world leading. The Australian tax system has been and continues to be the subject of ongoing policy activity and reviews by Australia's Federal Treasury, various ad hoc committees and governments over many years. We agree that these ongoing reviews are necessary to ensure that Australia's tax system remains fit for purpose in a constantly changing world. However, we believe these ongoing reviews could be made more systematic and could be better managed over time.
5. In relation to businesses operating across borders a multilateral approach is needed. Such an approach is currently being undertaken through a global initiative by the G20, the Organisation for Economic Co-operation and Development (OECD) and less developed countries in developing an Action Plan focused on base erosion and profit shifting (BEPS). It is designed to:
  - ▶ adjust the tax policies and tax laws for businesses operating internationally; and
  - ▶ ensure that tax authorities globally focus their compliance activities on such businesses.

We agree that Australia should continue to robustly participate in these global initiatives. Australia has a long history of supporting the activities of the OECD in this regard and we believe that Australia's best interests remain in supporting its activities and not acting outside of its recommendations.

6. It is important to preserve the international competitiveness of Australia's corporate and individual tax system. Tax competitiveness is important in attracting and retaining investment in Australia, leading to jobs for Australians and economic growth as was outlined in the Henry Review. Australia represents approximately 2% of the world's economic activity<sup>2</sup>.

Our comments on the matters of concern identified in the Committee's specific terms of reference can be summarised as follows:

- (a) Adequacy of Australia's current laws - Australia's existing tax system is already considered to be robust internationally in preventing tax avoidance. Risks to revenue are consistently being identified by respective governments and dealt with as part of an ongoing law reform agenda. We outline some strategic initiatives which have been taken to maintain Australia's corporate tax base including:
  - i. Implementation of a high quality general anti-avoidance rule (Part IVA of the Income Tax Assessment Act 1936) that was further enhanced in 2013.
  - ii. High quality controlled foreign company (CFC) rules, which ensure that Australian based multinational companies cannot inappropriately shift profits outside the Australian tax system.
  - iii. Comprehensive, updated (in 2012 and 2013), world-leading, transfer pricing rules which ensure that international related-party dealings with entities in Australia are taxed on an arm's length basis.
  - iv. Recently revised thin capitalisation laws that help regulate how much interest can be deducted in Australia by multinational businesses.
  - v. Rules which distinguish between debt and equity for tax purposes that help to regulate how much interest can be deducted from financing transactions.

Any discussion on adequacy of tax laws is incomplete without a recognition that our domestic rules need to be balanced with the need for a tax system that is internationally competitive.

- (b) The need for greater transparency to deter tax avoidance and provide assurance that all companies are complying fully with Australia's tax laws – The key to any question on transparency is the relevance and appropriateness of the information to the user. When it comes to assessing and deterring tax avoidance the key user of information for that purpose is the Australian Taxation Office (ATO). To that end we support the OECD, G20 and the ATO initiatives in this area that are focused on improved disclosure of the tax affairs of taxpayers to the relevant tax authorities. This approach is far more significant for the resilience of the tax system than public disclosures or public reporting of information that has little relevance or appropriateness to the public.

The Government has continued to enhance the ATO's ability to obtain relevant information most recently through joining the multilateral Convention on Mutual Administrative Assistance in Tax matters<sup>3</sup> which improves the ATO's capacity to receive relevant tax and income data from over 50 countries.

- (c) The opportunities to collaborate internationally to address the problem – International collaboration can occur at two levels; first at the policy and tax reform level and second at the tax administration and enforcement level. Australia is already a very active participant at both levels. Australia's current involvement with the G20 and OECD to address BEPS is a good example of collaboration at the policy and tax reform level. At the tax administration and enforcement level the ATO is a party to a number of international tax forums of tax authorities and is in fact a leader in enhancing the effectiveness of its tax compliance activities.
- (d) The performance and capability of the ATO to investigate and launch litigation, in the wake of drastic budget cuts to staffing numbers – In our view the ATO continues to be well placed to investigate and launch litigation through its investment in technology and increased disclosures by taxpayers, which combine to provide greater scope and efficiency in conducting risk assessments of taxpayers.

In our view the ATO is more focused as a result of changes in case selection and, as such, is able to manage the investigation and litigation processes effectively. The ATO's capabilities have been enhanced through its recruitment of senior private sector tax professionals into its leadership team, and its work on various global tax forums and involvement in a number of the BEPS working groups. The ATO is also exploring a range of different approaches which we consider will improve their efficiency in managing these processes. Such activities include early engagement on rulings, the External Compliance Assurance Product (ECAP) product, the use of the independent review process and a much greater willingness to explore Alternative Dispute Resolution (ADR) processes.

\* \* \* \* \*

Should you have any queries or would like to discuss this submission further please contact, in the first instance, Alf Capito, Tax Policy Leader Asia Pacific on (02) 9248 5555.

Yours sincerely

Ernst & Young

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## EY submission to Senate Economics References Committee

Our submission is divided into two parts. First we provide some overriding comments. Second we address each of the specific items included in the Committee's terms of reference.

### 1. Initial comments

There is a need to distinguish between issues that are relevant for multinational businesses and businesses that operate solely in Australia. However, decisions about tax reform must consider the implications for both

The terms of reference for this inquiry state the Committee wishes to examine *"tax avoidance and aggressive minimisation by corporations registered in Australia and multinational corporations operating in Australia..."*.

We note that there are two very different groups of issues involved here:

- A. The tax issues relating to entities operating only in Australia. These involve primarily a focus on Australia's domestic tax laws relating to companies, trusts and other entities.
- B. The tax issues relating to multinational corporations operating in Australia (whether foreign-owned "inbound groups" or Australian-owned "outbound investors"). These involve not just Australia's tax laws but also their interaction with the laws of other countries.

While this distinction must be acknowledged we believe that the two areas are not completely independent. When considering tax reform from any one perspective, the implications of that reform across both areas must be considered.

Australia's tax system is world leading and has been and continues to be the subject of bipartisan ongoing policy activity by Australia's Federal Treasury, various ad hoc reviews and governments generally over many years. However, we believe a better way of managing the tax reform process is required

Australia's tax policy settings have been the subject of many comprehensive examinations by governments of all political persuasions.

We highlight some previous relevant key strategic reviews of Australia's tax system.

- A. The Government has announced a review of Australia's tax system with a White paper expected to be completed before the next election.
- B. The previous government commissioned a Treasury examination of multinationals' tax minimisation strategies and the risks to the sustainability of Australia's corporate tax base. This led to some announcements in the 2013-14 Federal Budget but also a strong focus on working with the G20/OECD BEPS project, as part of the multilateral policy development

- C. Australia's Business Tax Working Group (BTWG) established by then Treasurer Wayne Swan after the October 2011 Tax Forum included reviews of Australia's thin capitalisation system
- D. Australia's Future Tax System review, chaired by then Treasury Secretary Ken Henry (the Henry Review), comprehensively reviewed options for consideration for Australia's tax system for investment, for businesses, for individuals and other issues.

The Henry Review considered issues including the level of Australia's company tax and the competitiveness of the Australian tax system, whether the company tax system should be structured to reduce any perceived bias to the use of debt, and laid out for potential policy consideration a range of other options.

- E. A review of Australia's Managed Investment Trust (MIT) system, including the role of property trusts and infrastructure trusts and associated companies, was established by then Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, Chris Bowen and then Treasurer Wayne Swan in 2008<sup>4</sup>.

This led to refinement by the then Labor Government of the tax laws relating to MITs and related entities, including measures in the 2009 Federal Budget, and the announcement by the then Assistant Treasurer Mr Bill Shorten<sup>5</sup> to further refine the system by development of a new system for MITs. This work is being carried on by the current Government.

- F. Many reviews conducted by the Board of Taxation, publicly, into aspects of Australia's taxation system. These are accessible from the Board of Taxation.<sup>6</sup>
- G. The Review of Business Taxation<sup>7</sup> carried out by a Treasury team with major business people as reviewers, chaired by John Ralph AC, was initiated by then Treasurer Peter Costello in 1998<sup>8</sup>. In 1999 initial responses included adoption of numerous tax integrity measures to protect the revenue as well as the proposal of other reforms. This review, like others mentioned, was conscious of maintaining tax revenues:

*"The recommendations will be consistent with the aims of improving the competitiveness and efficiency of Australian business, providing a secure source of revenue, enhancing the stability of taxation arrangements, improving simplicity and transparency and reducing the costs of compliance. The Review will adopt a comprehensive approach to reform driven by clear, sound principles involving a move towards greater commercial reality."* (emphasis added)

- H. The analysis released by then Treasurer Paul Keating in the Reform of the Australian Tax System: Draft White Paper, issued in June 1985"

As can be seen in this long list of reviews and papers, Australia's tax system has received significant attention over a long period to cover issues including "tax avoidance and aggressive minimisation by corporations registered in Australia and multinational corporations operating in Australia".

Ongoing monitoring is needed to counter problems and new issues. This should not be surprising. In an ever changing world no tax system can long remain optimal. Any system needs constant review and maintenance to ensure it remains fit for purpose.

We believe that there is a better way to manage tax reform in Australia.<sup>9</sup> Reform processes in the past have been largely ad hoc and reactive in nature. As detailed below, we believe that by changing some of the institutional arrangements and making the review and reform process more systematic, then better and more sustainable tax reform outcomes can be achieved.

The tax reform process for businesses operating across borders is more complex. A multilateral approach is needed

The issues relevant for multinational businesses add an extra level of complexity to the tax reform process. This is because the tax issues relevant for these businesses not only involve Australia's domestic tax laws. The tax laws of foreign countries are also relevant. The interaction between Australia's tax laws and those foreign country tax laws need to be assessed. As well, the capacity of tax authorities in Australia and internationally to deal with the issues in an efficient manner, avoiding double taxation and uncertainty for business, are important.

We believe that a multilateral approach is required. This approach is already being adopted by Australia.

Recently this issue has received significant attention by the OECD through its Action Plan on BEPS. Australia has been a significant participant in the development of this Action Plan.

We must protect the Australian tax base and ensure that our tax system is sustainable. However this must be balanced with the need for our tax system to be internationally competitive

The need to protect the tax base for Australia's tax system is important. However we believe that when addressing this matter a balance must be struck so that Australia's tax system also remains internationally competitive. This point is generally well accepted.

The Henry Review terms of reference issued by the then Deputy Prime Minister and Treasurer Wayne Swan<sup>10</sup> included:

- "The review should make coherent recommendations to enhance overall economic, social and environmental wellbeing, with a particular focus on ensuring there are appropriate incentives for:*
- 4.1. workforce participation and skill formation;*
  - 4.2. individuals to save and provide for their future, including access to affordable housing;*
  - 4.3. investment and the promotion of efficient resource allocation to enhance productivity and international competitiveness; and*
  - 4.4. reducing tax system complexity and compliance costs." (emphasis added)*

In its final report the Henry Review stated<sup>11</sup>:

*"The Australian economy is being transformed by the emergence of new centres of competition and opportunity in the region. The shift of the centre of gravity in the world economy towards Asia is reducing the distance between Australia and its export markets, adding considerable value to our natural resource wealth and opening new investment, trade and employment opportunities. However, growth in Asia will also attract globally mobile capital. Australia will need to respond if it is to remain an attractive place to invest and do business. Part of this response should be to ensure that the tax system supports investment, allocates resources to their most valued uses and does not inadvertently add to the cost of production through taxes on business inputs or excessive complexity and compliance costs...*

*Increasing capital and labour mobility will result in strong competition for capital, especially direct investment. Foreign direct investment in Australia as a share of GDP is low in comparison to many developed countries. The significant growth in the stock of foreign investment in Australia over the*

*past 20 years has been largely in the form of portfolio equity and debt. This is likely to reflect our tax settings, at least to some extent."*

This focus on international competitiveness of the tax system is not unique to Australia. South Africa appointed the Davis Tax Committee (DTC) in July 2013 to undertake a review<sup>12</sup> "to assess our tax policy framework and its role in supporting the objectives of inclusive growth, employment, development and fiscal sustainability". The DTC released an initial discussion paper in December 2014<sup>13</sup>, focusing on tax issues relating to multinational companies and tax adequacy. This discussion paper noted:

*"2.4 Balancing the Protection of the Tax Base and the Ensuring the Competitiveness of the Economy  
Addressing the BEPS concerns from a South African perspective requires that the country strengthen and/or comes up with measures to prevent the base erosion and profit shifting as identified in the OECD BEPS Action Plan. However, these measures should not be adopted without taking into consideration the need to encourage foreign direct investment...and also the need to preserve the competitiveness of South Africa's economy on the international scene. A balance has to be struck.*

*Tax competition, like other forms of competition, requires governments to provide a tax environment that is conducive to economic growth.' In practice, most taxes (not just the corporate income tax) can have an impact on competitiveness. In considering how tax policy can help to generate economic growth and prosperity, each country's tax system cannot be considered in isolation. In open economies where capital is mobile across boundaries and multinational enterprises play an increasing role in international trade and investment, tax regimes and tax rates potentially can have a significant influence on decisions about the location of production and investment".*

## 2. Comments responding to specific terms of reference items

In this section we respond to items (a) to (d) of the specific terms of reference which the Committee wishes to examine:

- “(a) the adequacy of Australia's current laws;*
- (b) any need for greater transparency to deter tax avoidance and provide assurance that all companies are complying fully with Australia's tax laws;*
- (c) the opportunities to collaborate internationally to address the problem;*
- (d) the performance and capability of the Australian Taxation Office (ATO) to investigate and launch litigation, in the wake of drastic budget cuts to staffing numbers;*
- (e) the role and performance of the Australian Securities and Investments Commission in working with corporations and supporting the ATO to protect public revenue;*
- (f) any relevant recommendations or issues arising from the Government's White Paper process on the 'Reform of Australia's Tax System'; and*
- (g) any other related matters.”*

We do not have any comments in relation to items (e), (f) and (g) of the inquiry's terms of reference.

### A. The adequacy of Australia's current laws

Our overarching comment here is that Australia currently has a world leading tax system. As part of Australia's ongoing development and maintenance of its tax system, any deficiencies have been consistently identified and addressed by both previous and current governments through various law review and reform processes, including some noted above.

We understand the Committee's concerns regarding the adequacy of Australia's current laws stem from recent media reports which suggest that Australian companies do not pay their fair share of tax.

Our view is that firstly some of these reports are misinformed as they are based on incomplete and overly simplistic analysis (discussed further at Section 2B.2). The comments fail to acknowledge the evidence that Australian company tax represents a major share of the Australian tax revenue. In fact, our tax system supports the payment of tax by Australian-owned and most ASX-listed companies.

As noted above, processes are in place to review the tax system to ensure its sustainability and efficacy. We believe these processes are the appropriate way to handle the question of whether Australia's current laws are adequate, rather than ad hoc responses to media reports.

#### A.1 Australia's existing tax system is already robust compared with other tax regimes internationally with strong CFC and integrity rules

Australia already has strong tax laws. For example the Australian tax system includes:

- ▶ a high quality general anti-avoidance rule (Part IVA of the Income Tax Assessment Act 1936) that was further enhanced in 2013.
- ▶ high quality CFC rules, which ensure that Australian based multinational companies cannot inappropriately shift profits outside the Australian tax system.
- ▶ comprehensive, updated (in 2012 and 2013), world-leading, transfer pricing rules which ensure that international related-party dealings with entities in Australia are taxed on an arm's length basis.
- ▶ recently revised thin capitalisation laws that help regulate how much interest can be deducted in Australia by multinational businesses.
- ▶ rules which distinguish between debt and equity for tax purposes that help to regulate how much interest can be deducted from financing transactions.

We know from our work in relation to the G20 BEPS project that many countries do not have such a strong assembly of laws.

To give the Committee an illustration of how Australia has led the world here, the OECD's BEPS Action Plan includes the making of recommendations in 2015 about potential use of a general anti-avoidance rules to counter inappropriate access to double tax treaties. The ATO was confronted in 2010 with various transactions where foreign investors sought to use interposed entities in double tax treaty countries, with little substance, to claim treaty benefits in relation to Australian tax payable. In 2010 the ATO used Australia's general anti-avoidance rule (Part IVA) to address this issue in Taxation Determination TD 2010/20<sup>14</sup>:

*"Income tax: treaty shopping - can Part IVA of the Income Tax Assessment Act 1936 apply to arrangements designed to alter the intended effect of Australia's International Tax Agreements network?"*

*Yes. However, it will depend upon whether a taxpayer has obtained, or would but for section 177F of the Income Tax Assessment Act 1936 (ITAA 1936) obtain, a tax benefit in connection with the scheme and, having regard to the factors in paragraph 177D(b), it would be concluded that the person, or one of the persons, who entered into or carried out the scheme or any part of the scheme did so for the purpose of enabling the relevant taxpayer to obtain a tax benefit in connection with the scheme."*

So a significant aspect of an issue which is currently concerning the G20 BEPS initiative has been addressed under Australia's domestic laws five years ago.

Another example is that the OECD issued in December 2014 an extensive paper dealing with the appropriate design of rules for countries to consider to prevent inappropriate or excessive claims for interest deductions by multinational businesses.<sup>15</sup> Australia has a number of measures targeting excessive tax deductions. These include our revised thin capitalisation rules (announced to be tightened by the previous government and enacted by the current Government), and also Australia's transfer pricing rules (updated in 2012 and 2013), which cover interest rates charged on funding from international related parties.

The tax policy monitoring and adjustment has been bipartisan. Australian Treasurer Joe Hockey acknowledged the strength of Australia's tax system in his 20 September 2014 media release 'Global leaders to tackle profit shifting and tax evasion'<sup>16</sup> where he notes that:

*"But in Australia we are already taking steps to ensure that profits earned here are taxed here. The Australian Taxation Office already has strong investigative powers to ensure that multinational companies operating in Australia are paying their fair share of tax....Combined with Australia's strengthened transfer pricing rules and our world leading anti-avoidance rules, the Commissioner's work will maintain the integrity and fairness of our tax system and help us collect the right amount of*

tax.”

## A.2 Risks to revenue have been identified by the current and former governments and are consistently on the law reform agenda

Australia, the G20 and OECD and developing countries recognise the need to update international tax rules to keep pace with the way companies conduct their business in the 21<sup>st</sup> century.

Australia has been continuously monitoring the issues and adjusting its tax rules to address risks posed by the evolution of the way in which companies conduct their business, specifically the ability of multinational companies to artificially shift profits to low or no-tax locations where there is little or no economic activity. These issues underlie the law changes in recent years on issues, such as:

- ▶ Thin capitalisation
- ▶ Transfer pricing
- ▶ Anti-avoidance rules
- ▶ CFC rules

As well, Australia is managing these issues appropriately through strong participation in the G20 and OECD coordinated approach on addressing BEPS. The Government has continued to take the same approach as that of earlier governments by undertaking consultations on domestic and international tax policies.

The previous government in the 2012-13 period examined and initiated reforms to manage risks to revenue. The then Assistant Treasurer David Bradbury, working with then Treasurer Wayne Swan:

- ▶ commented at length at the Institute of Chartered Accountants (ICAA) December 2012 conference, after the strong debate about multinational tax minimisation in the UK, Europe and US in 2012, on his perceived view on the risks the Australian economy from the activities of multinationals
- ▶ instructed the Federal Treasury to review the risks to the Australian revenue in detail, including the ATO appointing a reference panel of experts to provide input<sup>17</sup>
- ▶ released the Treasury preliminary Issues Paper On Multinational Profit Shifting, inviting submissions on these issues<sup>18</sup>
- ▶ released<sup>19</sup> in July 2013 the final “Risks to the Sustainability of Australia’s Corporate Tax Base Scoping Paper”<sup>20</sup> containing extensive discussion outlining the way ahead for Australia. In particular the Assistant Treasurer outlined the strategies for adoption:

*“The Scoping Paper notes that the preparedness of Governments to respond to integrity issues, the effectiveness of the Australian Taxation Office (ATO) and a strong compliance culture among Australian businesses have helped to sustain Australia’s corporate tax base... Following on from the Government’s recent amendments to increase the tax transparency of large corporate entities, the paper makes a number of recommendations focusing on how we can better identify, understand and respond to emerging risks in our corporate tax system.*

*A clear finding of the Paper is that global tax settings have failed to keep pace with changes in the global economy. This has, justifiably, led to growing concern around the world that multinationals, while acting within the law, are taking advantage of outdated international tax laws to reduce the taxation contribution they make to the countries in which they operate.*

*Updating the rules to address the deficiencies in the tax laws is beyond the scope of any one country acting alone – it requires the cooperation of the international community. With the support of the G20, the OECD has developed an Action Plan to address key pressures in the international tax system, to be implemented in a joint OECD and G20 project. As G20 chair in 2014, Australia can play a prominent role in determining and driving the base erosion and profit shifting reform agenda.”*

The previous government proposed various tax integrity law changes in the 2013-14 Federal Budget and the bulk of these have been implemented by the Government.

We suggest to the Committee the current position of, and risks to, Australia’s revenue have not changed in the 20 months since the release of that report. As well, in that period Australia has:

- ▶ chaired the G20 and its work on BEPS, involving not only all the developed countries of the OECD but also developing countries and countries which have a significant interest in enhancing their revenues
- ▶ the ATO has gone into a leadership role of the international Forum of Tax Administrators (FTA) globally, and in relation to the Asia-Pacific tax administrators through the Study Group on Asian Tax Administration and Research (SGATAR)
- ▶ legislated numerous measures announced by the previous government and delivered by the current Government including tighter thin capitalisation laws, strengthened general anti avoidance rules and updated transfer pricing rules, to address potential risks.

We note some actions of the current Government in this area, which include:

- ▶ Consultation on amending the Arm’s Length Debt Test (ALDT) in the thin capitalisation rules with the release of the Board of Taxation discussion paper on 1 February 2014
- ▶ In relation to legislated integrity measures, we particularly note the enactment of Tax and Superannuation Laws Amendment (2014 Measures No. 4) Bill 2014 which, amongst other things:
  - ▶ revised the statutory debt limits under the thin capitalisation rules (as noted above)
  - ▶ prevents the double counting of certain non-taxable Australian real property assets that can distort the application of the capital gains tax exemption for non-residents
  - ▶ restricts exemption on non-portfolio dividends to Australian resident companies to equity interests only
- ▶ Consultation on a potential targeted anti-avoidance rule to address certain conduit arrangements, (which was intended to replace the former Labor Government’s proposal to remove the concession that allows a tax deduction for interest expenses incurred in deriving certain foreign exempt income), resulted in an announcement in 2014-15 Mid-Year Economic and Fiscal Outlook (MYEFO) that this measure will not proceed<sup>21</sup>. That decision not to proceed was in our view the correct decision, given the extent of the recent changes to the thin capitalisation rules, transfer pricing rules and Part IVA, as well as the examination of this issue globally in the OECD BEPS project.

### A.3 Recent claims that Australian companies do not pay their fair share of tax and aggressively avoid their tax obligations are not supported by evidence

There has been recent press coverage and claims made about various defects in the Australian corporate tax system, particularly in regards to ASX listed companies, which we believe were not accurate and which could without correction taint any consideration of this matter.

We comment on some of these claims below:

#### (i) High Australian corporate tax collections are inconsistent with comments about major gaps in Australia's corporate tax system

Recent comments about major gaps in Australia's corporate tax system are inconsistent with the high Australian corporate tax take as a percentage of GDP. The contribution of corporate tax to the total tax mix in Australia is second only to Norway in the entire OECD. As the Business Council of Australia (BCA) chief Jennifer Westacott commented on in November 2014<sup>22</sup>:

*"More than \$70 billion of company tax is expected to be collected this year...Our corporate tax take as a share of tax revenue is the second highest in the OECD,"*

Martin Parkinson, the former Secretary to the Treasury noted in his 2014 address at the BCA Tax Forum<sup>23</sup> that Australia's tax mix *"is heavily weighted toward direct taxes on personal and corporate income"*, consistently from the 1950s, notwithstanding an increase in the GST rate and cuts to corporate and personal tax rates since then.

#### (ii) Claims that large Australian listed corporations aggressively avoid their tax obligations are inconsistent with evidence

First, as noted above, the Australian tax system has many design features as well as integrity measures in place to prevent shifting of profits offshore. As well, the ATO is also very active in its administration of these rules and compliance activities in relation to companies and other taxpayers (discussed below).

We have previously mentioned various relevant measures, including some recent integrity changes. We further note that:

- a) Australia has rules which classify debt and equity for income tax purposes, to regulate the use of debt which has equity-like features. These rules, in Division 974 of the Income Tax Assessment Act 1997, were introduced in 2002 and contain many complex tests. These rules are subject to current review by the Board of Taxation.
- b) The updated transfer pricing rules introduced in 2013 include the capacity for the ATO to reconstruct transactions in certain exceptional cases, as well as increased transfer pricing documentation requirements, which provide the ATO with increased powers and information to allow it to efficiently conduct its risk-based assessments.

Australia's dividend imputation system also plays an important role in encouraging Australian-owned and ASX-listed companies to pay tax in Australia.

As the Henry Review stated:

*"Dividend imputation also provides integrity benefits. For Australian companies with largely resident shareholders, company income tax acts as a prepayment of the personal income tax liabilities of shareholders on future dividends. The benefit to companies and their shareholders of avoiding or deferring company income tax is therefore reduced. This can increase company income tax revenues and reduce the need for anti-avoidance rules in general....*

*Tax administration and compliance costs are also reduced as companies spend fewer resources on trying to minimise tax paid. There is anecdotal evidence that some Australian companies bring forward tax obligations and eschew avoidance activities to generate franking credits. This appears particularly true of companies with a history of paying fully franked dividends.*

*For companies with foreign operations and a significant proportion of resident shareholders, imputation provides an incentive to shift foreign profits into Australia. This allows them to pay dividends from creditable Australian company income tax rather than non-creditable foreign tax. Similarly, imputation discourages domestically owned companies from shifting profits offshore."*

At the Senate Economics Committee hearings of 22 October 2014<sup>24</sup>, Mr Andrew Mills, Second Commissioner of the ATO, affirmed the strength of the Australian tax system, noting that:

*"Because of changes over recent years we have probably the strongest anti-avoidance and transfer pricing rules in the world. We have a system where companies, particularly listed companies, like to return profits and they like to tell the world that they are making profits. That then goes, in part, although they are different bases, it goes to an encouragement of ensuring that there is a taxable income. Why? Because they pay tax. Why does that matter? Because they can frank dividends. The market wants them to frank dividends and they will punish them if they do not. We actually have some of the structural things in place that encourage Australian companies to pay Australian tax."*

### (iii) Australia's tax laws concerning managed trusts have been and continue to be adjusted to protect the corporate tax base

The Committee should be aware that there is major, continuous monitoring of the Australian tax policy system relating to managed trusts, including property trusts, infrastructure trusts, equity trusts and similar managed funds. This activity involves transparent engagement involving the Federal Treasury, the ATO and successive governments, with many tax laws and tax policies monitoring the sector dating back to the 1980s and updated since.

Australia's tax laws contain "trading trust" rules designed to prevent managed trusts from conducting trading businesses to the detriment of company taxation (the Division 6C rules) introduced under then Treasurer Paul Keating in 1985: income subject to Division 6C is taxed at company tax rates. Division 6C was introduced to strengthen the Division 6B rules introduced in 1981<sup>25</sup> by the Fraser Government to prevent companies spinning out certain activities into trusts: income subject to Division 6B is taxed at company tax rates.

The 2008<sup>26</sup> review of Australia's Managed Investment Trust (MIT) system, including the role of property trusts and infrastructure trusts and associated companies, was established by Chris Bowen, the then Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, and then Treasurer Wayne Swan.

Mr Bowen's media release outlines the careful consideration of the tax policy issues involved:

*"The review will provide options for introducing a specific tax regime for managed investment trusts to reduce complexity, increase certainty and minimise compliance costs.*

*"This will allow the Government to implement reforms to enhance the international competitiveness of Australian managed funds to help ensure the future prosperity of the Australian economy."*

*"In conducting the review, the Assistant Treasurer has asked the Board, within the broad policy framework for the taxation of trusts as outlined in the terms of reference, to consider:*

- ▶ *international developments especially those in the US, UK and Canada.*
- ▶ *alternatives to the use of present entitlement to determine the income tax liability of beneficiaries and trustees, but which also provide broadly similar taxation outcomes for beneficiaries, having regard to the costs and benefits of those options;*
- ▶ *the international competitiveness of Australia's real estate investment trusts; and*
- ▶ *the desirability of extending relevant aspects of the recommended changes to the tax arrangements for other trusts.*
- ▶ *... options to reform the trading trust rules in Division 6C ... which particularly affect real estate investment trusts."*

The terms of reference for the review explained the underlying policy of the managed fund rules:

*"The Board of Taxation is requested to review the current income tax arrangements applying to managed funds that operate as managed investment trusts (MITs). That is, managed funds that are widely held collective investment vehicles undertaking primarily passive investments..."*

1. *The broad policy framework for the taxation of trusts is to tax the beneficiary on their share of the net income of the trust, so that the trustee is only taxed on income that is not taxable in the hands of beneficiaries. Within this framework, the Board should ideally develop options for reform with taxation outcomes that are broadly consistent with five key policy principles:*
  - i. *the tax treatment for trust beneficiaries who derive income from the trust should largely replicate the tax treatment for taxpayers as if they had derived the income directly;*
  - ii. *in recognition of the tax advantages available to trusts that are not available to companies deriving business income, flow through taxation of income from widely held trusts, such as managed investment trusts, should be limited to trusts undertaking activity that is primarily passive investment;*
  - iii. *beneficiaries should be assessable on their share of the net income of a trust whether it is paid or applied for their benefit, or they have a present right to call for immediate payment;*
  - iv. *the trustee should be liable to tax on the net income of the trust that is not assessable to beneficiaries in a particular income year; and*
  - v. *trust losses should generally be trapped in the trust subject to limited special rules for their utilisation.*
3. *... [explore] ...international developments in this area, especially those in the US, UK and Canada.*
4. *The Board should also examine potential reforms to the eligible investment business rules in Division 6C of the Income Tax Assessment Act 1936 that, while not compromising the integrity of the corporate revenue tax base ...*
5. *The Board should also examine ... whether there is a continuing need for the tax integrity rules in Division 6B of the Income Tax Assessment Act 1936, in light of the operation of the capital gains tax regime, dividend imputation and Division 6C;"*

At the same time Mr Bowen outlined the Government's plan to make interim changes to the Division 6C and 6B rules.



The Board's review was conducted publicly by the Board of Taxation, which issued a public report<sup>27</sup>. This led to refinement by the then Labor government of the tax laws relating to MITs and related entities, including measures in the 2009-10 Federal Budget.

The then Assistant Treasurer Mr Bill Shorten<sup>28</sup> announced plans to further refine the system by development of a new system for MITs.

*"The Assistant Treasurer and Minister for Superannuation and Financial Services, the Hon Bill Shorten MP, today released a discussion paper on the design and implementation details of the Government's new income tax system for managed investment trusts (MITs).*

*"This paper is one further step in the Government's plan to overhaul the taxation treatment of MITs and remove uncertainties," said the Assistant Treasurer.*

*"Once implemented, the Government's reforms will increase certainty for managed funds, reduce complexity and lower costs for MITs and their investors."*

*The Government announced the new tax system for MITs on 7 May 2010. The new system will benefit investors and trustees by removing longstanding uncertainty about the treatment of the income of MITs."*

This work is being carried on by the current Government.

As can be seen there has been close and continuing awareness of the tax policy and revenue issues associated with managed trusts by Treasury, the ATO, and federal governments for many years.\

## B. Any need for greater transparency to deter tax avoidance and provide assurance that all companies are complying fully with Australia's tax laws

Recent media reports have suggested that public reporting of detailed aspects of a company's tax calculations is the solution to deterring tax avoidance. The inquiry's terms of reference refer to "greater transparency."

As outlined below, we believe there is a need to differentiate between:

- ▶ tax transparency of taxpayers to the tax authorities in their own countries and in other countries in which they operate ("transparency to tax authorities");
- ▶ public reporting by widely held taxpayers to the community in their financial statements ("public reporting by companies"). We highlight that reporting in financial statements, and in publicly available financial data in relation to companies (in Australia and internationally) is currently broadly available in relation to publicly held and widely held entities as part of their disclosures. We note that the activities of global businesses which operate in Australia, their profitability in Australia and their tax exposures, are already visible in financial data available in Australia and in overseas jurisdictions; and
- ▶ public reporting by tax authorities of the affairs of individual taxpayers ("public reporting otherwise than by companies"). Australia has followed the lead of a few countries notably in Scandinavia in requiring the public disclosure of certain tax data in relation to companies and tax entities with revenues in excess of \$100 million, commencing with income of the year ended 30 June 2014, with that information to be provided in 2015.

We agree that tax authorities need proper disclosures of a company's tax affairs as well as the global tax affairs of multinational companies - transparency to tax authorities. There has been a concerted effort to ensure Australia is world leading in regards to transparency to tax authorities.

Internationally, the once in a century coordinated effort involving the G20, the developed countries of the OECD and less developed countries have identified the requirements for:

- ▶ stronger disclosures to tax authorities of the activities of multinational businesses. Taxpayer transparency to tax authorities was identified by the leaders of the world's developed countries in the G20 and less developed countries;
- ▶ more effective administration by tax authorities;
- ▶ best practice tax authorities such as the ATO to enhance the capacity building of the tax authorities in less developed countries; and
- ▶ more consistent global tax laws in order to prevent tax avoidance.

We suggest that, at a time when there is an unprecedented global commitment to improve the multilateral tax laws and tax administration, including taxpayer transparency to tax authorities, a further process to expand public reporting provides little benefit.

Public reporting of limited tax data in relation to a company is at best incomplete, can be misleading, can lead to misinformation and confuse the discussion. In fact inaccurate statements drawn from analysing the incomplete view of tax provided in public reports create risks to the public confidence in our tax system and could provoke tax avoidance behaviour by some sections of the community. Great care needs to be taken if there are increased public disclosures going forward to minimise any potential harm.



We suggest that:

- ▶ already publicly available information
- ▶ the unprecedented review and adjustment of the international tax system in the OECD BEPS project
- ▶ the strong Australian tax system
- ▶ the work of the ATO and information available to it

should provide a high level of protection for Australia's tax system in deterring tax avoidance.

## **B.1 The need for transparency to tax authorities to combat tax avoidance has been given significant attention by Australia and the global community**

A key global avoidance risk has been characterised by private wealth – undisclosed to tax authorities or to investors – and cashbox entities in secrecy jurisdictions.

That has been the focus of attention internationally for over a decade, and has seen the development internationally of major initiatives including:

- ▶ global action in which Australia has been a strong participant for an end to investor secrecy
- ▶ development of the Extractive Industries Transparency Initiative (EITI) to have greater disclosure of payments demanded by governments and officials for resources companies wanting to go about their legitimate business
- ▶ Australia's powers to seek information under its 45 full double tax treaties<sup>29</sup>
- ▶ the development of tax information exchange agreements (TIEAs) in which Australia has vigorously participated and has currently 34 agreements in force (with a further 2 not yet in force)<sup>30</sup>
- ▶ limitation of various Australian tax benefits provided to foreign investors in scenarios where there are not comprehensive double tax agreements or TIEAs in force
- ▶ demands by the US as the leading global economy for FATCA disclosures, by financial institutions of other countries of private wealth of US residents, to the US Internal Revenue Service
- ▶ penalties on banks for their participation in tax evasion schemes
- ▶ the development of the Common Reporting Standard (CRS) (which Australia has committed to implementing in 2017) whereby information will be disclosed by individual country financial institutions to their tax authorities and then to foreign investors' home tax authorities in relation to their financial affairs.

Australia, together with developed and developing economies, is addressing the issues in a multilateral, consistent, manner.

As well, the ATO and tax agencies have dramatically stepped up their collaboration<sup>31</sup>, including the ATO's involvement in the:

- ▶ FTA, the long-standing international organisation of tax authorities, focusing on information exchange and best practices in dealing with international and domestic tax administration.

- ▶ Joint International Tax Shelter Information and Collaboration Network (JITSIC), an initiative targeting corporate tax planning, initially involving only a few tax authorities which has now been expanded to a global multilateral network agency. The ATO has been a participant since inception of JITSIC, has a delegate in London and is working closely with other participant countries.
- ▶ Study Group on Asian Tax Administration and Research (SGATAR) where the ATO hosted the 44th meeting in Sydney in 2014 and is developing the capacities of the Asia Pacific countries and the sharing of information.
- ▶ OECD where the ATO and Treasury have representatives on the various OECD working parties and taskforces mentioned earlier.

The OECD comprehensive Action Plan on BEPS includes the development of country by country reporting (CbCR) to tax authorities by businesses, of significant detail about the nature and scope of businesses' activities.

We highlight that the focus of the G20, the OECD and the developing countries is CbCR. Under the major initiative for CbCR, the G20 and OECD are working to develop a template for master information to be provided to tax authorities, to be shared or available to tax authorities, to give individual country tax authorities a clear total picture of a multinational's global structure.

The focus of the OECD in the CbCR initiative is not on public disclosures.

The reasons for this are:

- ▶ Companies and multinational businesses are concerned about the release of sensitive commercial information about their global activities. The concern is that their information will be available to competitive businesses including businesses which might be owned by particular foreign governments. We have seen various instances of governments using commercially sensitive information to extract commercial benefits from businesses located in their jurisdiction.
- ▶ Tax authorities, which can provide confidentiality of data, are the appropriate agencies to demand tax disclosures from multinational businesses, which can be analysed by experienced tax officers, rather than broader material being placed in the public arena.

The European Union (EU) had floated the possibility of proposals to expand existing disclosures by financial institutions, including greater disclosures relating to taxes paid, to other non-financial corporations. In February 2014 the European Parliament and the European Council reached an agreement on a European Commission (EC) proposal to improve transparency disclosures by businesses on social and environmental matters (certain large companies have to disclose non-financial information on policies, risks and results regarding environmental matters, social and employee-related aspects, aspects for human rights, anti-corruption and bribery issues, and diversity on board directors).

However, the EC did not include country by country public reporting requirements in relation to taxation in the February 2014 announcement. The EC is to report back on country by country public reporting requirements in relation to taxation matters by 2018.

That reflects, in our view, the acceptance by the EU of the need for focus on global BEPS initiatives including CbCR to tax authorities, and thus to country tax policymakers.

## **B.2 Public disclosures of limited tax data to the public are at best misleading, and can lead to misinformation and confuse the discussion as they provide an incomplete view of taxes paid. In fact inaccurate statements risk public confidence in our tax system and could provoke tax avoidance behavior by some sections of the community**

We reiterate that transparency to tax authorities is pivotal, to provide tax authorities with the information they need to determine the tax properly payable in the countries. That requires significant specialised information. Under Australia's laws, the ATO already has full and complete access to information. Whilst this information does not completely cover cross-jurisdictional matters, that issue is already receiving attention as noted above and we support this.

Public disclosure of tax information by businesses (of information that is already disclosed to tax authorities) is a different issue. While the public disclosure is sometimes called transparency we reiterate that is a confusing title and is very different to transparency to tax authorities.

Public disclosures of businesses' tax positions risks causing misunderstanding and concern in business because the limited information is misunderstood by many participants. For example, a company's effective tax rate calculated using accounting profit is not an appropriate basis for assessing the adequacy of the company's tax liability due to differences in tax and accounting income.

We note here the evidence in the Senate Economics Committee hearings of 22 October 2014<sup>32</sup>, where senior members of Treasury and the ATO provided responses to questioning about the differences between accounting profit and taxable income:

*"Senator CANAVAN: So, given that relationship any analysis which relied on gross profit and not taxable income would have even larger errors given the recovery process?"*

*Mr Heferen (leader of the Treasury Revenue Group): It is more fundamental than that. It is not just an error. It is just comparing an apple with an orange and not being about fruit. With accounting profit and taxable income for some businesses some of the time there could be a degree of similarity, and, in fact, a recent report said that if you used accounting profit a lot of firms are earning 26 per cent rather than 30. I must confess I was surprised it was so high. But when you get right down to it, there are intended significant differences. Research and development tax concessions are a classic. Accelerated depreciation is another standard. The carried forward loss is another one.*

*For our ASX 200 companies, for the large ones, what would be critically important would be the fact that if they have foreign income, so they have an investment overseas, when the dividend comes back it typically would have been paid in the other country, so when it comes into Australia it is treated as non-exempt, non-accessible income. Yet from an accounting profit point of view, it could still show up as a profit. Once you go to that level then it is a situation where for a company to work out its taxable income, which starts with the accounting profit and then says, 'What do we need to deduct?'. The other one is interest cost.*

*... Mr Mills (Second Commissioner, ATO): ... just by way of example, if you have an Australian company where most of its operations are actually based in the US it will pay tax in the US. We will not seek to try to tax it again when it comes back to Australia. Its apparent rate of tax might be zero, but in fact it has been paying 35 or higher in the US. That will not necessarily come through, depending on what the structure is. That is why there is a lot of noise in this thing. ...*

*Mr Heferen: The Tax Justice Network deals with something completely different. It is not even in that debate or discussion. It is fundamentally a misunderstanding of what taxable income in Australia ought to be about. On page 8 of the report in the findings it states, 'The research presented here suggests that the tax planning activities of the ASX200 allow Australia's largest publicly listed companies to avoid up to an estimated \$8.4 billion in corporate tax annually.' That is patently false.*

*... My point is that it talks about an estimated \$8.4 billion in corporate tax annually. It does not say in some other taxes. It is in corporate tax. The fundamental proposition of corporate tax is that revenue outlays are deductible and with capital outlays you can have a deduction for depreciation or in some cases a special deduction through capital allowances and black hole deductions. I think they are making the proposition that if our tax system was changed to no longer be a corporate tax but something that has been mooted, a comprehensive business income tax, where you do not get that range of deductions, then maybe there is a discussion to be had, but that discussion I think as we have seen in the past belongs with the theoreticians and not in a practical sense.*

*I apologise if I am labouring this, but I do think it is a very important point, because it goes to the heart of the public acceptance of what is going on, and where there is a proper meaningful debate to be had through the G20 and the OECD to get it, if you like, almost coloured by something like this is extraordinarily unfortunate, because people will quite rightly look at this report and say, 'Hang on. Is the proposition that you get rid of research and development tax breaks?' You do the double taxing across different countries? I am talking about completely. You no longer have the capacity to carry forward losses. You actually tax capital gains on an accrual basis, as they do in accounting profit or declare, rather than on realisation, and in that world our tax system would be unrecognisable. It would not be unrecognisable but very difficult to recognise from the one it is today."*

The Senate Economics Committee hearings enabled the Treasury and ATO officers to explain that:

- a) Issues about tax paid by multinational businesses raise different questions to those relating to tax paid by Australian listed companies and by implication other Australian businesses. As noted by Treasury and ATO representatives, and the South African DTC in its December 2014 report, it is important to differentiate the two strands of tax policy analysis.
- b) The reliance on measures of accounting reported tax charges compared with accounting profits in published financial statements is misleading, because to use the phrase of Mr Heferen *"It is not just an error. It is just comparing an apple with an orange and not being about fruit."*

This is why the OECD, the G20 and multilateral BEPS initiative are focused on much stronger disclosures to tax authorities, who can see the full picture and understand all the issues, rather than public disclosures.

We agree with comments made by Mr Heferen that calculating effective tax rates based on accounting profit has the potential to give rise to misunderstanding as it is not representative of actual cash taxes paid.

There are legitimate reasons why accounting profit as disclosed in financial reports differs from taxable income but which give the perception that an entity is subject to a low "effective tax rate" including:

- ▶ Inclusion of foreign income that has already been taxed in a lower-taxed overseas jurisdiction in accounting profit
- ▶ Inclusion of accounting 'gains' such as unrealised revaluations to fair value in accounting profit
- ▶ Additional deductions and/or offsets available for tax to incentivise taxpayers and promote investment e.g. research and development, accelerated depreciation.

Analysts not familiar with the complexities of tax rules may also:

- ▶ Be applying an effective tax rate analysis on listed trust structures (which are flow through entities and are not subject to tax as the ultimate beneficiary is taxed)

- Be comparing current tax against accounting profit instead of total tax expense (in this case timing differences between accounting and tax for example, depreciation rates and accrued expenses could give rise to a low effective tax rate analysis).

It is important to stress that these tax adjustments are common and that companies are not seeking to improperly access additional tax benefits in these circumstances – it is simply a function of how the accounting standards and tax rules differ. Public analysis of taxes compared to accounting profits is therefore misleading.

An implication of misleading public analysis is the perception that large corporations avoid tax. This may actually serve to increase tax avoidance by other sections of the community. This point is noted by Neil Olesen, Second Commissioner of the ATO and Rob Heferen, Executive Director of the Treasury's Revenue Group in the Senate Economics Committee hearings of 22 October 2014<sup>33</sup>:

*"Mr Olesen (ATO): The point I was trying to make is that I am worried about the perception it creates for the rest of the community that people are not paying their appropriate share under the laws as they stand. That is an unfair impression to leave, and a damaging one from a tax administrator's point of view, because perceptions of fairness of the system and how it operates with people paying their fair share is an important element of the success of any tax system. Where I was going to go next on that is that companies pay tax at 30c in the dollar on their taxable income. To the extent that some conclusions are drawn about rates of tax, having a look at accounting profit as opposed to taxable income is meaningless to the extent that taxable income and accounting profits are two fundamentally different concepts, so you cannot draw a conclusion. ... The next layer of that is then to say, why are they different? There is a whole range of reasons why taxable income as defined in the tax laws is different from accounting profits. There is any number of reasons. It can be, for example, timing differences around capital allowances, or it might have to do with exempt foreign dividends, or it might have to do with express concessions in the tax law, say, around offshore banking units. It might have to do with trusts and the way that income flows through trusts. There is any number of reasons why you get a big difference between accounting income and taxable income, but the truth is when you are looking at taxable income all companies pay tax at 30c in the dollar.*

*... Mr Heferen (Treasury) If I could intervene. I think it is important in this discussion, given the overall importance, as acting Commissioner Olesen has said, the impact or the effect that it might have on people's confidence in the system to have the concepts clearly separated. Clearly in the international debate led by the G20, and supported by the OECD, there is the work at the multinational corporation level, and the issue that the world finds itself in with a range of large multinationals parking money in tax havens, not repatriating that back on shore and then utilising conflicting rules. The common case often argued is with the United States and with Ireland about tax residence and where the taxpayer needs to remit tax, and then you have large multinationals that have a zero rate of tax but clearly make profit.*

*... but my urge to this committee and any other committee that follows it is to conceptually separate that from observations that there are Australian companies on the ASX 200 that have a zero or 10 per cent rate of tax. It has nothing to do with that issue. It is all about, well, they did not make any profit so they should not pay tax, or they made some accounting profit but because of their accelerated depreciation or their research and development or their carried forward losses or their foreign source income they are actually not subject to tax. The report that talks about zero and 10 per cent tax rates is actually an analysis of what is an appropriate tax treatment for those, given the tax system we have. ... The worry where I sit, the same as where the ATO would sit, is that when they conflated on one hand you have got some that looks pretty egregious and, on the other hand, you have got, 'Well, this is how the system ought to work.' When they are conflated, because they are so difficult, complicated and hard to pick apart, it can colour the debate." (emphases added)*

We are concerned in particular that misleading perceptions that Australian ASX200 companies avoid tax



aggressively, or that all multinational businesses avoid tax aggressively, can colour public perceptions of the fairness of Australia's tax system. They can affect the willingness of Australian businesses more broadly to comply with Australian tax laws. We suggest that these are the issues to which Mr Olesen and Mr Heferen were referring in the materials above.

Great care needs to be taken if there are increased public disclosures going forward to minimise any potential harm.

## C. The opportunities to collaborate internationally to address the problem

At the tax policy and law reform level, the G20 and OECD have already identified the need for improvement of the international tax system comprising double tax treaties, and potentially domestic tax laws, through their active management of the BEPS project.

Australia and the ATO have been actively involved in BEPS and other opportunities for international collaboration, and have in fact held many leadership roles in these forums. We agree that involvement in international consultation, and not unilateral measures is the appropriate way to deal with any deficiencies in the international tax system.

As well, at the level of tax administration and enforcement by tax authorities, the ATO has been actively involved in collaborating internationally with tax authorities.

### C.1 **Australia is working closely with the G20 and OECD to address BEPS and with other international forums. A multilateral approach is key.**

The rules governing multinational businesses' activities need to be modernised, to better deal with globalised business supply chains. The focus of this international activity, led by the G20 with Australia as a significant player, is

- ▶ broader than of the OECD developed "old capital countries"
- ▶ includes the emerging economies such as BRICS (Brazil, Russia, India, China, South Africa)
- ▶ the UN bloc of developing countries

and is based around having unified standards.

Australia played a major role in 2014 in development of the international initiatives dealing with the avoidance by of tax by multinational businesses. Actions included the following:

- a) the G20 identified that the international moves in relation to
  - ▶ BEPS affecting multinational businesses and
  - ▶ CRS and other anti-evasion measures affecting private wealth

involved not only the OECD and G20, but also emerging countries some which do not have the same legal and tax administration powers.

The G20 therefore focused in Australia's G20 lead year on a significant move to reach out tax authorities of emerging countries of Africa and Asia, to enhance their capacity to develop tax policies and to administer the policies.

- b) Australia hosted a tax policy conference in Tokyo in May 2014, which location was chosen as we understand to be accessible to less developed countries in the Asian and other regions. This initiative will be followed by Turkey the current G20 leader.

- c) As well the ATO significantly enhanced its involvement in the global groups of tax administrations to further Australia's own revenue collection objectives and the global objectives.

These actions evidence the concerted policy action focused on

- ▶ the correct tax laws and
- ▶ the correct tax administration of those laws.

We note in particular:

- ▶ the ATO having an even stronger role in the FTA, leading as we understand the initiative for joint audits and enhanced exchange of information in relation to the actions of multinational businesses
- ▶ the ATO convening and hosting the SGATAR Asia-Pacific tax authorities' forum, and being instrumental in converting SGATAR from a conference with exchange of views into a much more dynamic organisation, focused on enhancing the capacity and information exchange of the relevant tax authorities.

A great concern of the OECD is that countries might start to undertake unilateral tax policies, competing for a share of the pie on tax collections from international business, and leading to uncertainty and double taxation. The risk is a slowdown in business activity in a global challenging economic environment.

We note the strong messaging from the OECD about the need to proceed in a coordinated manner, otherwise the risk is that there will be chaos. For example, Secretary General of the OECD Mr Angel Gurría stated in the OECD November 2014 report to the G20 Leaders<sup>34</sup>

*"We must work together to ensure a principled approach is taken to reach our common goal of reforming the international tax system. This work is fundamental to put in place a sustainable structure based on global consensus which will withstand the challenges of the 21st century, and restore the trust of our citizens in the fairness of the tax system."*

And

*"Across all of the BEPS deliverables, effective implementation will be central to ensuring the policy objectives are met, including consistent and coordinated application of the agreed rules... Effective implementation and administration will also reduce compliance costs for both businesses and governments, eliminate potential arbitrage opportunities among rules implemented differently, and minimise the risk of double taxation that could otherwise arise"*

Pascal Saint-Amans, Director of the Centre for Tax Policy and Administration at the OECD, aired similar comments in an article published in the World Post in September 2013<sup>35</sup>

*"But without international, consensus-driven action we risk countries taking unilateral action to protect their tax bases which could easily lead to tax chaos for the global business community. That is why the OECD -- a unique forum for international cooperation and dialogue -- is working with countries around the world to bring the international tax rules into the 21st century."*

On 14 November 2014 at Brisbane G20 Summit he noted at the close of G20 Brisbane leaders meeting<sup>36</sup>

*"Charis Palmer: ... You talked about the top down political support that you're seeing that are obviously are having a big impact on the work that you're doing. In terms of the legislative changes that will be required in some countries to bring effect to that, what are your feelings on that, and is there any momentum there? Because obviously the political will and the political discussion might be there, but*

*the action is a very different thing?*

*Pascal Saint-Amans: Paradoxically, I'd say there is too much momentum, and we're telling our member countries, "Please hold on." The reason why we're doing BEPS - and I haven't mentioned it, but I think it's extremely important - We need to be balanced. It's easy to bash multinationals - and it's wrong. If they have planned aggressively, it's because the international tax framework was deficient. If it was deficient, it's because member countries, countries in general, didn't update it properly. So what we are saying is that the companies did plan very aggressively, but based on loopholes. Now, because of the crisis, the government had to respond to the outrage of the public. Why do we face increases in personal income tax, in VAT, where multinationals don't pay their share? I wouldn't say a fair share. Their share - because they reduce their effective tax burden by far from the nominal tax rates. Why? Not because the parliament has decided so. Not because the people decided so. They could have decided for supporting their champions to reduce the rights, not the case. Because you have loopholes, and because an obscure group of people in Paris at the OECD have not updated the standards properly. So the countries had to react, and that's why we have this political support. But they are eager on acting as quickly as possible. And we're telling them, "Listen, the reason why we launched this BEPS project is to fix the international system, because if we don't fix it, all the countries will take unilateral measures which will be detrimental to cross-border investments." Because then you have chaos. You move from double non-taxation to double taxation. Not good. Not better.*

*So we say we need to have agreed rules through which you will eliminate double non-taxation. You will maintain the ability of eliminating double taxation. We have an action, 2014 to be delivered in 2015, which is about effective dispute resolution mechanisms. It's true tax administrations are more aggressive. And we need to make sure that where there are disputes, these disputes be solved without double taxation remaining.*

*So to respond to your question, we're trying to tell the countries, "Please don't rush taking unilateral measures, because precisely this project is about having all the countries agreeing common rules which will have to be implemented by domestic legislation, but these domestic legislation should be compatible, should be coordinated, so that you don't do deteriorate the environment of investment." (emphases added)*

A multilateral approach still requires further consultation at the domestic level. The South African DTC December 2014 discussion draft report highlights that it is not necessary for South Africa to automatically adopt every single recommendation which will flow from the BEPS initiative, and all the recommendations need to be calibrated against the national policy requirements and existing law of South Africa<sup>37</sup>.

In the same way it is not necessary for Australia to automatically adopt every single recommendation of the G20 BEPS initiative, particularly those relating to the design of domestic tax rules, because Australia already has high quality tax laws. The OECD Action Plan on BEPS includes recommendations for the design of domestic tax laws in countries where the tax laws are not of Australia's standards.

For example, Australia might have various rules which currently exceed or at least match the likely recommendations from the BEPS program, including Australia's:

- ▶ Part IVA general anti-avoidance rule. As mentioned earlier, the BEPS Action Plan will include recommendations about potential use of a general anti-avoidance rules to counter inappropriate access to double tax treaties. The ATO, in the light of Australia's general anti-avoidance rule in Part IVA, addressed this issue in 2010 in the abovementioned Taxation Determination TD 2010/20.
- ▶ Transfer pricing rules
- ▶ CFC rules

As mentioned earlier, the OECD issued in December 2014 an extensive paper whereby countries can consider the appropriate design of rules to prevent inappropriate or excessive claims for interest deductions by multinational businesses. Australia has a number of measures targeting excessive tax deductions, including:

- ▶ Australia's transfer pricing rules, updated in 2012 and 2013, cover interest rates charged on funding from associated parties and which counter planning which might previously have been undertaken
- ▶ Australia's recently enhanced thin capitalisation rules, adjusted to have a lower debt: equity ratio, which limits the debt which can be borrowed by businesses in relation to their multinational activities or by foreign-owned businesses

Australia, like every other country including the US, UK and South Africa, will need policy analysis and consultation about whether those recommendations require any action in the Australian context.

Australia's role in the tax law and policy debate and tax administration debate must be, while contributing proactive ideas, to achieve maximum consistency and alignment of global rules and administration, to further Australia's growth and economic objectives.

## **C.2 Role of ATO in collaborating with other tax authorities is paramount to achieving efficient tax administration with appropriate certainty**

Irrespective of law changes, it is very important for tax authorities to administer the law properly and appropriately. As noted above, Australia is party to a number of information exchange agreements with other tax authorities.

ATO Deputy Commissioner Mark Konza, in his address to the Tax Institute NSW 7th Annual Tax Forum in 22 May 2014 highlights some of the other international collaborative efforts of the ATO<sup>38</sup>

*"... we are currently involved in a cooperative compliance approach involving five other jurisdictions to investigate the global tax planning of multinational enterprises operating in the e-commerce industry. Initially, collaboration between tax administrations led to the production of an aggregate risk report, using intelligence from each country to gain a better understanding of particular business structures and potential BEPS risks. This intelligence was then used by the group to identify the arrangements of a small number of multinational enterprises where it is highly likely BEPS risks could be present. This information is now being used by audit teams to develop an informed global view of these particular multinationals enterprises and test how they sit with the existing law. Through this work with other jurisdictions we were also able to provide tax structuring examples to the OECD digital taskforce and the hybrids focus group. On the bilateral side we have also been involved in two joint audits with another revenue administration. One of these joint audit cases is of particular strategic importance to us as it involves some of the BEPS issues covered in the action plan. We expect that it will be able to provide Treasury with important information in evaluating Australia's tax policy settings and the effectiveness of our current legislative and compliance tools. Like our multilateral cooperation these joint audits have assisted us in understanding the global operations and tax planning arrangements of multinational enterprises. Bilateral audits are becoming an increasingly common feature of the international tax system and the OECD has issued a guidance note to assist administrations set them up."*

## D. The performance and capability of the ATO to investigate and launch litigation, in the wake of drastic budget cuts to staffing numbers

Our overarching comment is that the ATO currently does a good job balancing the various needs of stakeholders and understands the need to balance efficiency against being properly resourced and to be an appropriate enforcer of the laws, by taking a risk-based approach to the administration of tax law.

Underpinning the ATO's actions is its model of compliance which provides a structured way of looking at the full range of taxpayer attitudes to tax responsibilities. The ATO notes that:

*"At the base of the pyramid are the majority of taxpayers who are willing to do the right thing. At the tip are those relatively few taxpayers that have decided not to comply - choosing to evade tax or opt out of the tax system completely."*<sup>39</sup>

For the majority of taxpayers therefore the ATO is more inclined to provide support, including education rather than to launch investigations and litigation.

The ATO has adopted a Risk Differentiation Framework (RDF) which it uses to classify many taxpayers within this risk pyramid. By use of this risk assessment approach they have been effective at applying commercial principles to determine where best to place their resources.

As part of this approach the ATO develops and publishes an annual work program (compliance program) which identifies what taxpayer activities are attracting the ATO's attention, what the ATO sees as risks and what remedies they will adopt. The ATO also uses the RDF approach to rank businesses and wealthy individuals according to the risk they pose to the revenue system and determine the intensity of the ATO's response. This complements the compliance model, which suggests an appropriate choice of remedy.

Data matching has also assisted the ATO's investigative functions by providing the ATO with a variety of third party data sources including banks, employers, government bodies, AUSTRAC and stock exchanges to verify information and alert the ATO to any inconsistency. This data feeds into the ATO computer systems and 'risk engine' software to assist in the risk assessment process.

The ATO through these various tools and filters has become much more efficient at identifying taxpayers where there are potential for conflicting views or approaches. This creates significant efficiencies within the ATO as they are no longer spending significant amounts of time reviewing taxpayers where there are ultimately no adjustment or potentially favourable adjustments (i.e. the review leads to a refund). Historically our experience was that significant ATO resources were applied to these types of reviews.

In our view the ATO has in recent years become far more efficient in its approach to interaction with taxpayers. It has developed its RDF which better signals to taxpayers the basis on which they are assessed (which includes their approach to interactions with the ATO) and the consequences of adopting positions which do not involve active and constructive engagement with the ATO.

We see the ATO approach as appropriate from the perspective of:

- ▶ Efficient use of its resources
- ▶ Reducing the imposition of cost, time and frustration for the vast bulk of corporate and other taxpayers
- ▶ Allowing a greater focus on those taxpayers which take more innovative or challenging positions or seek to evade taxation.

This approach is completely consistent with the best practice recommended by the FTA.

## D.1 Key ATO compliance initiatives

The ATO has also been innovative in adopting a number of additional strategies to engage with the taxpayer community in a way which significantly reduces the overall cost to the ATO of dealing with issues and allows focus on high-value issues. This includes:

- ▶ The adoption of an early engagement model on Private Binding Rulings
- ▶ The development of the ECAP approach for resolution of factual queries
- ▶ The use of Independent Reviews to assist in reviewing and resolving the ATO position before an issue moves to objection and appeal and
- ▶ The use of a range of ADR processes.

We discuss the merits and benefits of each of these below.

Accordingly, the Committee should recognise that investigating and launching litigation does not apply to the majority of taxpayers. The ATO's appropriate focus on taxpayers which are flagged as higher risk by these techniques means that the ATO are able to achieve the same or greater outcomes with reduced headcount where that head count is applied in a much more focused way.

We have seen a number of initiatives which the ATO has adopted in recent years which we believe are all contributing to increased efficiency and effectiveness of the ATO and so allow more significant outcomes from reduced resources. We outline some of these below.

### *Early Engagement on Private Binding Rulings*

The ATO use Private Binding Rulings as a way to give taxpayers comfort on the ATO's interpretation of the law ahead of entering into a transaction. These rulings do not in the Australian context mitigate any tax liabilities or reduce any tax obligations of the taxpayers. They provide taxpayers and the ATO with an agreed approach on the basis of the information provided to the ATO. If the information is incorrect the ruling does not bind the ATO.

The ATO has recently changed their approach to the administration of the ruling process and as such is engaging earlier with taxpayers. This has had the effect of encouraging the use of the ruling process. This also has the effect of allowing the ATO to gain a better understanding of transactions, real-time. At the same time this reduces the likelihood of incorrectly-identified disputes which is expensive for both parties and involves significant ATO resources.

### *External Compliance Assurance Product (ECAP)*

This product involves having the taxpayer's auditor confirm certain factual issues for the ATO. The auditor is governed by a range of independence standards such that the ATO can rely on the assurances given by the auditor.

This product was not developed as a cost saving program but as a way to allow the ATO to reach more taxpayers and to effectively leverage off the taxpayers' existing systems. It is generally more efficient for the taxpayer as the auditor knows the taxpayer's systems and is able to gain the comfort necessary to give the ATO the details and assurance of accuracy they require in a less intrusive way. This is an example of the ATO working with the business community in an attempt to develop ways to work "smarter" and more efficiently. This type of process should be encouraged in our view.

### *Independent Reviews of tax disputes*

The ATO has introduced into the large business audit process an “independent review” stage. This process involves ATO officers from the objection and appeal area within the ATO (i.e. those involved in normally reviewing objections to assessments and then managing any litigation), who carry out an initial review prior to the issue of an amended assessment.

The independent ATO reviews might find for the ATO audit teams or for the taxpayer. EY’s view is that this independent review is very positive. It has resulted in benefits to both the ATO and the taxpayer by:

- ▶ in some instances assisting in having the parties move to Alternative Dispute Resolution (ADR) at an earlier stage, so saving both the ATO and the taxpayer time and money.
- ▶ in other instances it has assisted both parties to clarify their differences so aiding in the dispute stage by reducing the ATO’s and taxpayers’ areas of disagreement or clarifying the dispute at an earlier stage.
- ▶ in some cases matters which should not be pursued by the ATO because their technical grounds were not well founded are dropped at an earlier stage.
- ▶ taxpayers may also gain a better understanding of their own position and why they should accept the ATO’s position, without continuing to dispute the ATO position.

The overall impact of independent reviews is that an appropriate outcome is more likely to be achieved at an earlier stage in a dispute and consequently the ATO or taxpayer is less likely to pursue litigation on issues which are unproductive. This has the effect of significantly reducing ATO resource requirements which would otherwise be required to support such litigation on issues which are unproductive.

### *The use of Alternative Dispute Resolution (ADR) processes*

The ATO leadership has encouraged ATO field officers to embrace the use of ADR to resolve matters. There are a range of different approaches which include:

- ▶ traditional settlement discussions;
- ▶ the use of external mediators to assist in reaching a resolution
- ▶ The use of retired judges to provide the parties with a neutral evaluation of both parties positions, which then often results in a compromise being reached.

These processes have had a significant impact on the level of litigation by the ATO, where many matters are resolved by the parties reaching compromises which are acceptable to all on areas where the outcome is not clear.

The use of ADR means lower costs in time and resources which historically would have gone into litigation.

## **D.2 The ATO has invested in technology and improved its processes to operate more efficiently to not only reduce compliance costs but also to improve risk assessment through use of data**

The ATO, like every other professional services organisation, has invested heavily in technology and systems to enable it to operate more effectively.

In the 21st century a key focus of the ATO is on their processes and systems. These more than head count in our view are critical to ensuring the ATO's output is effective.

These systems should assist in processing large numbers of tax returns in a way that only those where professional judgment is required are considered. At the same time it eliminates significant risks of human error incorrectly processing an issue or raising a concern where it is not material.

The ATO has seen, under the previous government and governments before it, billions of dollars of expenditure in IT systems, data interrogation systems and processes designed to enable it to focus resources on the greatest risk in the tax system.

This is consistent with how businesses operate, and how professional auditors operate. The move has been away from mere mechanical steps being conducted, to exercise of professional judgment.

This is not a new development. The ATO initiated its risk-based approach and its co-operative compliance model under former Commissioner of Taxation Michael Carmody, more than a decade ago. The expenditures on technology, and reductions of ATO headcount, have been continuing for decades.

The current adjustment of ATO approaches is consistent with that long-run strategy of the ATO, to which is applied an increasing volume of technology, and specialists.

The strong focus on high risk, high tax potential activities is outlined in the ATO Second Commissioner Andrew Mills' speech delivered on 20 January 2015<sup>40</sup>

*"Any suggestion that we are going 'soft' on large corporates avoiding their tax obligations could not be further from the truth. As I have previously said, it's important to have a debate but even more important to do so with 'facts', not myths....*

*We have commenced more than 200 client risk reviews on multinational companies, including 25 tech companies or companies that conduct a significant portion of their business digitally. We have completed approximately 50% of the reviews and have commenced 20 audits where we have identified significant concerns. Our risk identification program is ongoing and we expect to commence further risk reviews and audits in the future.*

*By the second half of this year, we are expecting to see some of these cases tested in court. No doubt the world will be watching with interest to see the outcomes.*

*We also expect some companies will accept that they need to contribute more tax in Australia without the need for litigation."*

### **D.3 ATO continues to design forms and tax laws to require taxpayers to disclose more tax information**

A key driver of ATO efficiencies has been the specific drive to require taxpayers to disclose more information to the ATO in a way that enables the ATO to more efficiently identify issues and challenges.

For example, the ATO introduced a new International Dealings Schedule (IDS) in 2012 which requires more detailed disclosures of taxpayers' international dealings than in previous years (replacing the previous years' Schedule 25A and Thin Capitalisation Schedule). The IDS (the 2014 version is 13 pages long before any data is entered<sup>41</sup>) requires taxpayers to make extensive disclosures, including the main transfer pricing method used for each related-party transaction or dealing and also disclose the level of their transfer pricing documentation.

As well, the 2013 transfer pricing law changes meant that self-assessment was introduced in Australia's transfer pricing laws, which places the onus on taxpayers to prepare documentation to support their transfer pricing position or otherwise face increased penalties.

These changes better enable the ATO to better perform its risk assessments in respect of multinationals as highlighted by Deputy Commissioner Mark Konza's address on BEPS at Macquarie University on 26 November 2013 where in respect of the ATO's International Structuring and Profit Shifting (ISAPS) program he notes that<sup>42</sup>

*"As a first step, the ATO has undertaken an extensive case selection process applying a risk filtering process to the 2012 Internationals Dealing Schedule (IDS) to identify cases where the risk might present itself."*

\* \* \* \* \*

<sup>1</sup> Terms of reference of the Senate Economics Committee Review are to consider

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Corporate\\_Tax\\_Avoidance/Terms\\_of\\_Reference](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Corporate_Tax_Avoidance/Terms_of_Reference)  
"Tax avoidance and aggressive minimisation by corporations registered in Australia and multinational corporations operating in Australia, with specific reference to:

(a) the adequacy of Australia's current laws;

(b) any need for greater transparency to deter tax avoidance and provide assurance that all companies are complying fully with Australia's tax laws;

(c) the opportunities to collaborate internationally to address the problem;

(d) the performance and capability of the Australian Taxation Office (ATO) to investigate and launch litigation, in the wake of drastic budget cuts to staffing numbers;

(e) the role and performance of the Australian Securities and Investments Commission in working with corporations and supporting the ATO to protect public revenue;

(f) any relevant recommendations or issues arising from the Government's White Paper process on the 'Reform of Australia's Tax System'; and

(g) any other related matters."

<sup>2</sup> As at 2013, Australia's GDP was US\$1.560 trillion compared to the World GDP of US\$75.59 trillion. Accessed via

<http://data.worldbank.org>

<sup>3</sup> <http://www.oecd.org/ctp/exchange-of-tax-information/conventiononmutualadministrativeassistanceintaxmatters.htm>

<sup>4</sup> <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/010.htm&pageID=003&min=ceb&Year=2008&DocType=0>

<sup>5</sup> <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2010/004.htm&pageID=003&min=brsa&Year=2010&DocType=0>

<sup>6</sup> [http://www.taxboard.gov.au/content/Content.aspx?doc=Completed\\_Reviews\\_and\\_Consultations.htm](http://www.taxboard.gov.au/content/Content.aspx?doc=Completed_Reviews_and_Consultations.htm)

<sup>7</sup> <http://www.rbt.treasury.gov.au/>

<sup>8</sup> <http://ministers.treasury.gov.au/listdocs.aspx?pageid=003&doctype=0&year=1999&min=phc>

<sup>9</sup> <http://www.ey.com/AU/en/Services/Tax/EY-tax-reform---a-better-way---overview>

<sup>10</sup> <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/036.htm&pageID=003&min=wms>

<sup>11</sup> Final Report, Overview, section 1.3 The rise of Asia and the shifting centre of world economic activity and 1.4 1.4 Increasing globalisation

<sup>12</sup> From the Davis Tax Committee website

The Committee's objective is to assess South Africa's tax policy framework and its role in supporting the objectives of inclusive growth, employment, development and fiscal sustainability.

[Judge Dennis Davis](#) will chair the Committee. The other members are:

i. [Professor Annet Oguttu](#), ii. [Professor Matthew Lester](#), iii. [Professor Ingrid Woolard](#), iv. [Dr. Nara Monkam](#), v. [Ms. Tania Ajam](#),

vi. [Professor Nirupa Padia](#), and vii. [Mr Vuyo Jack](#). A National Treasury official, Mr. Cecil Morden, and a South African Revenue

Service (SARS) official, Mr. Kosie Louw, will be ex-officio members, providing technical support and advice to the Committee. In

addition, a team comprising National Treasury and SARS officials will provide secretarial support to the Committee. SARS will provide office accommodation and logistical support to the Committee. For the members' biographies, [click here](#). [Our terms of reference](#) (TOR).

<sup>13</sup> <http://www.taxcom.org.za/>

<sup>14</sup> <http://law.ato.gov.au/atolaw/view.htm?dbwidetocone=06%3AATO%20Rulings%20and%20Determinations%20%28Including%20GST%20Bulletins%29%3ABY%20Type%3ADeterminations%20%28Including%20GST%20Bulletins%29%3ATaxation%3A2010%3A%2304900200000%23TD%202010%2F20%20-%20Income%20tax%26c%20treaty%20shopping%20-%20can%20Part%20IVA%20of%20the%20Income%20Tax%20Assessment%20Act%201...%3B>

<sup>15</sup> OECD discussion draft on Action 4 (Interest deductions and other financial payments) (18 December 2014). Accessed via

- <http://www.oecd.org/ctp/aggressive/discussion-draft-action-4-interest-deductions.htm>
- <sup>16</sup> <http://jbh.ministers.treasury.gov.au/media-release/052-2014/>
- <sup>17</sup> <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2012/162.htm&pageID=003&min=djba&Year=2012&DocType=0>
- <sup>18</sup> <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2013/062.htm&pageID=003&min=djba&Year=2013&DocType=0>
- <sup>19</sup> <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2013/139.htm&pageID=003&min=djba&Year=&DocType=>
- <sup>20</sup> <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2013/Aus-Corporate-Tax-Base-Sustainability>
- <sup>21</sup> [http://budget.gov.au/2014-15/content/myefo/download/MYEF0\\_2014-15.pdf](http://budget.gov.au/2014-15/content/myefo/download/MYEF0_2014-15.pdf)
- <sup>22</sup> Based on the OECD's Revenue Statistics for 2012 (Australia's % of corporate tax compared to total tax is 18.9% compared to Norway's 24%). Accessed via <http://stats.oecd.org/>
- <sup>23</sup> Martin Parkinson address to BCA Tax Forum "Enhancing our living standards through tax reform" (11 September 2014). Accessed via <http://www.treasury.gov.au/PublicationsAndMedia/Speeches/2014/Martin-Parkinson-20140911>
- <sup>24</sup> Hansard can be accessed here [http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/1d76a5bd-dc72-4f6d-b4d2-6815c9e77ffc/toc.pdf/Economics%20Legislation%20Committee\\_2014\\_10\\_22\\_2969\\_Official.pdf;fileType=application%2Fpdf#search=%22committees/estimate/1d76a5bd-dc72-4f6d-b4d2-6815c9e77ffc/0000%22](http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/1d76a5bd-dc72-4f6d-b4d2-6815c9e77ffc/toc.pdf/Economics%20Legislation%20Committee_2014_10_22_2969_Official.pdf;fileType=application%2Fpdf#search=%22committees/estimate/1d76a5bd-dc72-4f6d-b4d2-6815c9e77ffc/0000%22)
- <sup>25</sup> <http://law.ato.gov.au/atolaw/view.htm?rank=find&criteria=AND-division%20b-basic-exact&target=GA&style=java&sdoid=EXM/EMITA2E813/COM/ATO/00003&recStart=21&Pit=99991231235958&Archived=true&recnum=21&tot=35&pn=G-LEG::GA>
- <sup>26</sup> <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/010.htm&pageID=003&min=ceb&Year=2008&DocType=0>
- <sup>27</sup> [http://www.taxboard.gov.au/content/content.aspx?doc=reviews\\_and\\_consultations/managed\\_investment\\_trusts/default.htm&pageid=007](http://www.taxboard.gov.au/content/content.aspx?doc=reviews_and_consultations/managed_investment_trusts/default.htm&pageid=007)
- <sup>28</sup> <http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2010/004.htm&pageID=003&min=brsa&Year=2010&DocType=0>
- <sup>29</sup> <http://www.treasury.gov.au/Policy-Topics/Taxation/Tax-Treaties/HTML/Income-Tax-Treaties>
- <sup>30</sup> <http://www.treasury.gov.au/Policy-Topics/Taxation/Tax-Treaties/HTML/TIEA>
- <sup>31</sup> <https://www.ato.gov.au/Media-centre/Speeches/Other/BEPS-Action-Plan-Update/>
- <sup>32</sup> Hansard can be accessed via [http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/1d76a5bd-dc72-4f6d-b4d2-6815c9e77ffc/toc.pdf/Economics%20Legislation%20Committee\\_2014\\_10\\_22\\_2969\\_Official.pdf;fileType=application%2Fpdf#search=%22committees/estimate/1d76a5bd-dc72-4f6d-b4d2-6815c9e77ffc/0000%22](http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/1d76a5bd-dc72-4f6d-b4d2-6815c9e77ffc/toc.pdf/Economics%20Legislation%20Committee_2014_10_22_2969_Official.pdf;fileType=application%2Fpdf#search=%22committees/estimate/1d76a5bd-dc72-4f6d-b4d2-6815c9e77ffc/0000%22)
- <sup>33</sup> Hansard can be accessed via [http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/1d76a5bd-dc72-4f6d-b4d2-6815c9e77ffc/toc.pdf/Economics%20Legislation%20Committee\\_2014\\_10\\_22\\_2969\\_Official.pdf;fileType=application%2Fpdf#search=%22committees/estimate/1d76a5bd-dc72-4f6d-b4d2-6815c9e77ffc/0000%22](http://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/1d76a5bd-dc72-4f6d-b4d2-6815c9e77ffc/toc.pdf/Economics%20Legislation%20Committee_2014_10_22_2969_Official.pdf;fileType=application%2Fpdf#search=%22committees/estimate/1d76a5bd-dc72-4f6d-b4d2-6815c9e77ffc/0000%22)
- <sup>34</sup> <http://www.oecd.org/ctp/OECD-secretary-general-report-tax-matters-brisbane-november-2014.pdf>
- <sup>35</sup> [http://www.huffingtonpost.com/pascal-saintamans/international-tax-rules\\_b\\_3943150.html](http://www.huffingtonpost.com/pascal-saintamans/international-tax-rules_b_3943150.html)
- <sup>36</sup> [http://www.g20australia.org/news/transcripts/oecd\\_press\\_conference\\_g20\\_international\\_media\\_centre\\_brisbane](http://www.g20australia.org/news/transcripts/oecd_press_conference_g20_international_media_centre_brisbane)
- <sup>37</sup> "2 Addressing BEPS In Light Of South Africa's Conceptual Framework", especially "2.2 Is South Africa bound to follow the OECD Action Plan?" in the DTC Introductory Draft Report - [http://www.taxcom.org.za/docs/New\\_Folder/1%20DTC%20BEPS%20Interim%20Report%20-%20The%20Introductory%20Report.pdf](http://www.taxcom.org.za/docs/New_Folder/1%20DTC%20BEPS%20Interim%20Report%20-%20The%20Introductory%20Report.pdf)
- <sup>38</sup> Deputy Commissioner Mark Konza's address to the Tax Institute NSW 7th Annual Tax Forum in 22 May 2014 accessed via <https://www.ato.gov.au/Media-centre/Speeches/Other/BEPS-Action-Plan-Update/>
- <sup>39</sup> <https://www.ato.gov.au/General/How-we-check-compliance/Our-approach-to-compliance/>
- <sup>40</sup> *It's time for tax (administration) reform, Second Commissioner Andrew Mills, Keynote address to the Australasian Tax Teachers' Association 27th annual conference, University of Adelaide, 20 January 2015*, [https://www.ato.gov.au/Media-centre/Speeches/Other/It-s-time-for-tax-\(administration\)-reform/](https://www.ato.gov.au/Media-centre/Speeches/Other/It-s-time-for-tax-(administration)-reform/)
- <sup>41</sup> <https://www.ato.gov.au/Forms/International-dealings-schedule-2014/>
- <sup>42</sup> <https://www.ato.gov.au/Media-centre/Speeches/Other/Base-erosion-and-profit-shifting/>